APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11,551.

UNITED STATES OF AMERICA, *Appellee,*

versus

STARLING GENE HELM, *Appellant.*

PPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, AT GREENSBORO. EDWIN M. STANLEY, CHIEF DISTRICT JUDGE.

Argued November 8, 1967. Decided November 10, 1967.3

Before WINTER and BUTZNER, Circuit Judges, and WOODow W. JONES, District Judge.

. F. Seawell, Jr., (Seawell, Van Camp & Morgan on brief) for Appellant, and William H. Murdock, United States Attorney, (R. Bruce White, Jr., Assistant United States Attorney, on brief) for Appellee.

ER CURIAM:

Appellant, who was convicted for failure to report for duction in violation of 59 U.S.C.A. (Appendix) § 462, peals from the judgment sentencing him to a term of two

years. He claims that he was improperly ordered to report, because he had been denied classification as a conscientious objector or as a farmer and denied a hearing to establish his claim thereto.

We affirm.

Our review of the record discloses that appellant, during the five and one-half years that he was registered with his Local Board prior to receiving a notice of induction, never made a claim that he was a conscientious objector or a farmer, and that such claim came only after he had received a notice to report for induction, and five months before he would have attained the age of twenty-six years and have been draft-exempt under current policy. There was thus no reason to afford him a hearing before the order to report for induction; and after the order to report for induction, there was no factual basis on which it may be concluded that there was such a "change in registrant's status resulting from circumstances beyond his control" within the meaning of 32 C.F.R. § 1625.2(b), such as to require the Board to reopen his case after the order to report for induction. *United States* v. *Al-Majeid Muhammad*, 364 F. 2d 223 (4 Cir. 1966).

Affirmed.

STATUTE

50 U.S.C. App. § 456(j), which, at all times pertinent* to this case, read as follows:

> "(j) Nothing contained in this title [sections 451-454 and 455-471 of this Appendix] shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title [said sections], be assigned to non-combatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such non-combatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) [section 454(b) of this Appendix] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate. . . . Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board.

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* The Military Selective Service Act of 1967, effective July 1, 1967, made certain amendments to Section 6(j) not relevant to this case.

Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title [said sections], he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) [section 454(b) of this Appendix] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title [section 462 of this Appendix], to have knowingly failed or neglected to perform a duty required of him under this title [sections 451-454 and 455-471 of this Appendix]. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors."

REGULATIONS

Title 32, Code of Federal Regulations

§ 1625.2 When registrant's classification may be reopened and considered anew.

"The local board may reopen and consider anew the classification of a registrant (a) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (b) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 252) or an Order to Report for Civilian Work and Statement of Employer (SSS Form No. 153) unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control."

§ 1625.4 Refusal to reopen and consider anew registrant's classification.

"When a registrant, any person who claims to be a dependent of a registrant, any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, or the government appeal agent files with the local

board a written request to reopen and consider anew the registrant's classification and the local board is of the opinion that the information accompanying such request fails to present any facts in addition to those considered when the registrant was classified or, even if new facts are presented, the local board is of the opinion that such facts, if true, would not justify a change in such registrant's classification, it shall not reopen the registrant's classification. In such a case, the local board, by letter, shall advise the person filing the request that the information submitted does not warrant the reopening of the registrant's classification and shall place a copy of the letter in the registrant's file. No other record of the receipt of such a request and the action taken thereon is required."

§ 1625.11 Classification considered anew when reopened.

"When the local board reopens the registrant's classification, it shall consider the new information which it has received and shall again classify the registrant in the same manner as if he had never before been classified. Such classification shall be and have the effect of a new and original classification even though the registrant is again placed in the class that he was in before his classification was reopened."

§ 1625.12 Notice of action when classification considered anew.

"When the local board reopens the registrant's classification, it shall, as soon as practicable after it has again classified the registrant, mail notice thereof on Notice of Classification (SSS Form No. 110) to the registrant and on Classification Advice (SSS Form No. 111) to the persons entitled to receive such notice or advice on an original classification under the provisions of § 1623.4 of this chapter."

§ 1625.13 Right of appeal following reopening of classification.

"Each such classification shall be followed by the same right of appearance before the local board and the same right of appeal as in the case of an original classification."

§ 1625.14 Cancellation of Order to Report for Induction or for Civilian Work by reopening of classification.

"The reopening of the classification of a registrant by the local board shall cancel any Order to Report for Induction (SSS Form No. 252) or Order to Report for Civilian Work and Statement of Employer (SSS Form No. 153) which may have been issued to the registrant, except that if the registrant has failed to comply with either of those orders, the reopening of his classification thereafter by the local board for the purpose of placing him in Class IV-C or Class V-A shall not cancel the order with which he failed to comply."